Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of

Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities
Siting Policies

Mobilitie, LLC Petition for Declaratory Ruling

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WT Docket No. 16-421

Comments of the Petition Residents of Westleigh, A Residential Community in the City of Gaithersburg, Maryland.

These comments are submitted by and on behalf of the petition residents of Westleigh, a community of approximately 300 homes located within the City of Gaithersburg, Montgomery County, Maryland. The "petition," attached hereto, references a document signed by almost all homes located within the Westleigh community that asked the Mayor and the City Council of the City of Gaithersburg, a small city of approximately 75,000 persons, to resist and reject the location of five, 30 foot tall, "small" cell towers literally on the front lawns of five homeowners, but within the right of way, in our community and in an immediately adjacent neighboring community.

As noted, the five front lawn locations are within the municipal "right of way" of the City. Our community consists of single family homes the deeds of which make clear that all utilities are to be buried underground in perpetuity, and all utilities have indeed been located underground throughout the half-century existence of our community.

Our fundamental point is that not all municipal "rights of way" are alike. Generalizations about the "right of way" run the risk of overlooking the specific character, needs and wants of individual residential communities. A right of way may involve a major road, a very wide avenue, a pure or mixed-use commercial setting, or a small, quiet, residential street with all public utilities buried underground from the very inception of the community. That is the Westleigh community right of way. The public right of way in our community includes the residential streets, of course, but also extends four or five feet onto the front lawns of most of our homes. The residents of our community strongly and unanimously object to the location of cell towers in that specific type of right of way. For that reason, the petition residents of Westleigh respectfully submit the further comments below.

The petition residents of Westleigh, a residential community in Gaithersburg, Maryland have profound concerns about the Mobilitie, LLC petition for a declaratory ruling as described in Public Notice DA 16-1427 and dated December 22, 2016. We recognize the desire of the cell tower firms such as Mobilitie, LLC for expedited and simplified processes for the consideration of siting requests. However, there is a profound problem with broad federal preemption of local zoning ordinances and, therefore, municipal siting consideration of specific small cell tower facilities. The difficulty with mandatory "batch processing" of many such requests simultaneously is that it overlooks the needs of specific local communities such as ours. We therefore **strongly object** to any limitations on the ability of our municipal government to consider the specific character of particular residential communities in evaluating requests to locate small cell tower or DAS installation facilities in our residential community.

Summary

The "Westleigh Development", is located within the Gaithersburg, Maryland city limits. It is a nice, quiet residential neighborhood with all utilities below ground, as specified in our deeds. The placement of cell towers and/or distributed antenna systems (DAS) in the residential portion of our community's right of way (a notion that is inconsistent with the implicit promise made to us in our property deeds, which specify all utilities are to be located beneath the ground) is deeply disturbing to us. Equally disturbing would be a Declaratory Ruling built on generalities inapplicable to such situations, and that

would provide for a general override or preemption of our local government's ability to preserve the specific residential character of our community. Aesthetic blight is neither progress nor development.

In the spring 2016, another cell tower company, not Mobilitie, LLC, proposed the siting of five above-ground small cell towers in the community, four of which would be on residential front lawns and the fifth of which was on a property corner, again on a front lawn, but also precisely at the location where elementary and middle school children gather to await their school buses. It was evident that the company in question had given no consideration whatever to the character of the community or the specifics of the proposed sites. Since that time, our community has been very vigilant and very reactive to the idea that our federal government might exercise its preemptive powers to disserve communities like ours. Local governments, through their zoning authorities, must be able to remain responsive both to the needs and to the views of local community residents. The needs for cellular service and the needs of cell tower companies that facilitate such service must be balanced against the character of our neighborhoods, the value of our properties, considerations of neighborhood safety and aesthetic blight. Denial of local governments' right of individual consideration of small cell tower sitings recklessly overrides those important factors, and risks placing corporate profit maximization over everything else.

It was evident to the residents of our community that the cell tower provider in question had considered nothing other than what was optimal for its coverage concerns when it developed the proposed placing of the five towers in question. One of our members, a radio frequency engineer, illustrated precisely what the company was seeking with its proposed placements. The fact that the placement was literally on the front lawns of five homes with no above ground utilities elsewhere in sight, and one directly adjacent to the bus stop for our elementary and middle school children, amply proved that point. Had that proposal been jammed together with 95 other proposed sitings by that company or other ones, and if the FCC requires our small city government with its limited staff to rule on all 100 sitings at once in some very limited time, the results for the community and the city would be disastrous.

In a petition against DAS facilities to be placed within our community, 223 residents signed which corresponds to almost the entire community (see attached Appendix A). Our community has spoken clearly and unequivocally, and such facilities, as proposed to be located by the cell tower company Crown Castle, are not welcome within our community for at least one or more of the facts outlined below:

- 1. These facilities as proposed to be located are unsafe and present a hazard to our community;
- 2. Studies have shown that these DAS facilities, as proposed to be located by Crown Castle, can have a radically degrading but entirely uncompensated, effect on our property values (by as much as 30%);
- 3. These facilities are inconsistent with the character of our quiet residential neighborhood; and
- 4. These facilities, as proposed to be located by Crown Castle, represent aesthetic blight, would be quite intrusive to the surrounding environment and the traditional residential character of the development;

In conclusion, we urge the FCC not to require "batch processing" of supposedly similar siting applications by our local governments. To do that would be to override entirely the traditional prerogatives of local governments in the zoning domain. More important, it would evince a profound disrespect for the lives, needs and preferences of citizens, and also their property values. It is a quintessential function of local government to balance and adjust competing needs and priorities by drawing zoning lines and districts. It is beyond the capacity of the national government – or any federal regulatory agency – to draw those lines from the 30,000 foot level and still respect the distinctive needs and character of local communities.

Further Considerations

- Developments, like Westleigh, which have all utilities below ground, have always
 had all utilities below ground and whose property owners' deeds' reflect from
 the foundation of the community that all utilities within the development shall
 be below ground, should be excluded from any regulatory consideration for
 installation of new, 24 to 30 feet high cell towers. Cities such as Gaithersburg
 must retain plenary discretion both under federal law and regulation and
 Maryland law and regulation to relocate such proposed tower sitings
 appropriately.
- 2. The Westleigh community has strongly and overwhelmingly objected to such cell tower installations. This community opposition is a factor that controlling federal precedent deems highly relevant and legally cognizable in local government zoning deliberations. Nothing should be done that places local government in a position of having no choice but to disregard the overwhelming, strongly held convictions of their citizens because of preemptive federal regulations.

- 3. Westleigh residents have also raised significant safety concerns about the location of these towers in the right of way. Cell tower company siting proposals have, in our experience, disregarded these considerations. An automobile or truck that strikes such a tower and its associated weighty antenna package would pose a substantial safety hazard to which our community has not heretofore been exposed. And, unlike the location of these towers atop existing structures along major roadways outside our community, there are many children walking to and from school and around the community in general who would be exposed to this hazard.
- 4. Finally, we believe these towers labeled stealth or not pose major aesthetic issues in a community with no above ground utilities to speak of. They are grossly out of place and represent aesthetic blight.

PROPERTY VALUES: The Westleigh community also has profound concerns about property values when cell towers are sited in such a way as not to take the location of the towers themselves into consideration. Minimizing the deleterious effect on property values should be an intrinsic part of all siting decisions.

A 2014 survey by the National Institute for Science, Law & Public Policy (NISLAPP) found that 94 percent of homebuyers are "less interested and would pay less" for a property located near a cell tower or antennas and DAS facilities. 79 percent of home buyers said that, under no circumstances, they would ever purchase or rent a property within a few blocks of a cell tower or antennas, and almost 90 percent said they were concerned about the increasing number of cell towers in their residential neighborhood. The Chairman of the NISLAPP said, in a statement, "The results of the 2014 NISLAPP survey suggest there is now a high awareness about potential risks from cell towers and antennas, including among people who have never experienced cognitive or physical effects from the radiation." One of the residents of Westleigh – a career financial services professional with advanced degrees in finance – told us and testified to our City Council that "I can tell you that markets react to perception with every bit the vigor that they do for facts. If there is even just a perception of negativity about cell towers (the response here would be testament that this perception exists), the impact to home prices is a near certainty."

To further this point, a study was done by the School of Business and Economics at the University of Kentucky on this topic just last year. It establishes that a house located within 500 feet of a tower sells for 7.5% less than a similar house outside of the affected range of a tower. Furthermore, the impact on home prices does not diminish until you

reach a range of more than 4,500 feet away from its nearest tower. This means the entirety of our community, Westleigh, and the adjacent communities, suffer from the proposed installations. Average sales price in our neighborhood of 207 homes is \$651k, according to property records on recently sold homes. That translates into a total wealth destruction of over \$10.1mm in our small neighborhood alone. There is no compensation for this contemplated by any discussions to date.

We appreciate the opportunity to respond to this important Public Notice and look forward to see that the FCC and our Federal Government does consider their citizens' views and requests in approaching this difficult issue. We want to assure you that we will work with you as we make every effort to preserve the beautiful community we live in and make educated, reasonable, and informed decisions which affect our citizens.

Very truly yours,

for

Sheldon L. Pine, Attorney

3/7/201

Vassilios Magginas, Professional Engineer

On Behalf of the Petition Citizens of Westleigh

External Links and Information

A. National Toxicology Program Report (NTP) released 5/19/2016

http://biorxiv.org/content/biorxiv/early/2016/05/26/055699.full.pdf

B. America Cancer Society Report released 5/27/2016 findings on RF and reference the NTP report above in (A)

https://acspressroom.wordpress.com/2016/05/27/ntpcellphones/

C. Property Value Degradation and Cell Towers

http://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy

http://realtormag.realtor.org/daily-news/2014/07/25/cell-towers-antennas-problematic-for-buyers

APPENDIX A

Petition Signatures of the Westleigh Development Residents against the DAS cell towers/facilities installation.

We, the residents of <u>Westleigh</u> Development, strongly oppose the installation of such facilities as they devalue our properties, are unsafe, are visually appalling, and do not belong in our small residential development.

Street Address	Name (First, Last)	Signature	Notes	Phone Number
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We, the residents of <u>Westleigh</u> Development, strongly oppose the installation of such facilities as they devalue our properties, are unsafe, are visually appalling, and do not belong in our small residential development.

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We, the residents of <u>Westleigh</u> Development, strongly oppose the installation of such facilities as they devalue our properties, are unsafe, are visually appalling, and do not belong in our small residential development.

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Street Address	Name (First, Last)	Signature	Notes	Phone Number	
57 Redding	MARAKKAL	M. Perakka		301-1628319	
Ridge 0	Cunn	0.00		DU . 11/1 / 11/1	
6 HOY LOUIS BLA.	JOAN Green	7		240.401.6466	
44 Redding.	Mingie Jiang	Junghe Kang		301-266.3567	
21 Redding Rodg	SOMY ZIMN	gu surys		240,374.3568	
	1 Redger Currer	Regular		301 676 2111	
26 Trenorthy		(Mys)		240-374-822	5
26 Treworth	7 / /	0 26		240-418-7531	′
18 Kardins Ridge	Andy Welaugh	a melin	ANKLAUGIKTUI	301-233-2017	
14 Treworthy Isd		D. Johnson	06/14	301-279-5549	
25 TREWORTHY RA		20130		240-801-9370	
25 TREWORTHY RY		Donald OAnglo		240-801-9370	
	Druce Johnson	Brees Johnson		301272-5549	
36 Redding Ridgel	Ke, weng	200		301-610-6618	
26 Trenothy	of fam Ho	dering		240-374-8225	-
17 TurnhamL	Karrenne Krim	**		301.315.0019	
	- Donald Chi	world Cl		301-762-8218	
	Linda Eisenhut	L. Erseghut		301-762-3450	
29 Treworthy Rd		Jan heals		301-762-3450	
4 the Syan Ro	ASVAHAM SUGEL	MARI		301-340-817	
31 Treworthy	Lorraine Kelman	Jouldman		301762-8323	
•					
			1		
					370
15 Turn Hana Lane	Sy- Huey Tsai	Su- Huy Isai	Subuey. teai @ yah.	301-956-4358	246
O Turnham Est	Robert Kendnic	k Hendert	Bobn Hacsoola V	onizon net 3014	1
		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		301-956-4358 Onizon.net 3014	
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